

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Civil Action 2:20-cv-02753-RMG-MGB

DONAVON CHESTNUTT,

Plaintiff,

v.

BRYAN P. STIRLING,

LEVERN COHEN,

CONSONYA WASHINGTON,

CEDRIC MAJOR,

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

Defendants.

PLAINTIFF'S RESPONSES UNDER LOCAL RULE 26.03

DONAVON CHESNUTT, by and through undersigned counsel, provides the following responses under Local Rule 26.03:

1. Brief Statement of Facts

Plaintiff Donavon Chestnutt alleges that on April 4, 2019, while incarcerated at Ridgeland Correctional Institution (RCI), Defendant Major, acting in his capacity as a correctional officer for the State of South Carolina, allowed armed inmates into Chestnutt's cell and then failed to intervene while those inmates beat, kicked, and

stabbed Chestnutt. Defendant Major then escorted the assaultive inmates away from Chestnutt's cell, failed to provide medical aid to Chestnutt, and failed to alert other prison staff of the assault.

Plaintiff further alleges that supervisory defendants Stirling, Cohen, and Washington were on notice that RCI was inadequately staffed and that the lack of staffing greatly increased the risk of improper guard-inmate relationships. Plaintiff also alleges that supervisory Defendant Washington and Cohen had direct knowledge that Defendant Major had, on other occasions, demonstrated willful disregard for his job responsibilities relating to facility safety and tacitly rewarded that behavior by giving Defendant Major a promotion. Plaintiff alleges that Defendants Stirling, Cohen, and Washington's failure to remove Defendant Major from duty for several months following this incident further demonstrates their deliberate indifference towards injuries like Plaintiff's.

2. **Fact Witnesses**

In addition to the Plaintiff and Defendants, counsel anticipates the following fact witnesses:

Timothy Fowler—an inmate at SCDC and the cellmate of Plaintiff Chestnutt during his assault on April 4, 2019.

John/Jane Doe—prison medical staff who treated Chestnutt after his assault can testify to the extent of his injuries including their appearance and severity. Prison medical staff can also testify to the continued care that Chestnutt has received, including for mental and emotional issues arising from the assault.

3. Expert Witnesses

Dr. Doe, treating physician that provided wound care to Chestnutt at the hospital following his assault.

Anticipated Expert, in the field of law enforcement and prison management that can testify to the foreseeable harms that can arise from understaffing a prison facility.

4. Summary of Claims and Defenses

Plaintiff alleges that this conduct by Defendant Major violated the Eighth and Fourteenth Amendments by failing to protect him from foreseeable violence at the hands of other inmates by demonstrating deliberate indifference to his serious medical need.

Plaintiff alleges that Defendant Major's conduct also constitutes the tort claims of negligence, assault, and battery, and thus triggers liability for Defendant SCDC under the South Carolina Tort Claims Act.

Finally, Plaintiff alleges that supervisory defendants Stirling, Cohen, and Washington are liable for Plaintiff's injuries. Specifically, Chestnutt argues that by failing to employ a safe number of guards, failing to adequately train and discipline their employees, and by tacitly rewarding prior misconduct of Defendant Major, Defendants Stirling, Cohen, and Washington demonstrated deliberate indifference towards his health and safety in violation of the Eighth and Fourteenth Amendments.

5. Discovery Deadlines

The parties have consented, by joint agreement, to a modified discovery schedule.

6. Special Circumstances affecting the Scheduling Order

N/A.

7. Additional Information

N/A.

Respectfully submitted this 18th day of November, 2020.

s/ Allen Chaney

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